Judge Avern Cohn: “Boiler Plate” Criminal Jury Instructions

Now that you have heard the evidence and the arguments of the lawyers, it becomes my duty to give you your final instructions as to the law applicable to this case. You will recall that from time to time during the trial I gave you instructions on specific points. The instructions which I gave you during the course of the trial and these instructions should be considered by you in your deliberations.

In giving you these instructions I will divide them in five parts:

The first part will be basic instructions-instructions that apply to a juror's duties in considering a case generally.

The second part will relate to the Indictment and what it means and the role it plays in your determinations.

The third part of these instructions will be on the law applicable to this case.

The fourth part will deal with how you judge the evidence.

The last part of these instructions will deal with the verdict and your deliberations.

Please listen carefully. If you have any questions or are not sure you understand them completely, toward the close I will tell you how you can talk to me.

You have been chosen as jurors to try the issues of fact presented by the claims of the Indictment and the denial made by the not-guilty plea(s) of the defendant(s). The law says you are to perform this duty without bias or prejudice as to any party.

The law also says you are not to be governed by sympathy or public opinion. The defendants and the public expect that you will carefully and impartially consider all of the evidence, follow the law as stated by me, and reach a just verdict regardless of the consequences.

It is your duty as jurors to follow the rules of law as I give them to you in these instructions, and to apply these rules of law to the facts as you find them from the evidence you have heard and seen.

You are not to single out any one or more instruction alone but must consider these instructions as a whole.

You are not to be concerned with the wisdom of the rules of law as I describe them to

you. Regardless of any opinion you may have as to what the law ought to be, it is a violation of your duty to base a verdict upon any other view of the law than that given to you in these instructions; just as it would be a violation of your duty, as finders of the facts, to base a verdict upon anything but the evidence.

Justice through trial by jury depends on the willingness of each juror to seek the truth as to the facts from the same evidence presented to all of the jurors; and to arrive at a verdict by applying the same rules of law as given in these instructions.

Unless I tell you otherwise, you should consider each instruction given to you to apply separately and individually to each defendant.

A separate crime or offense is charged in each count of the Indictment. Each count and the evidence pertaining to it should be considered by you separately. The fact that you may find a defendant not guilty or guilty as to one count should not control your verdict as to any other count.

It is your duty to give separate and personal consideration to the evidence regarding each defendant. When you do so, you should analyze what the evidence shows with respect to each defendant. Each defendant is entitled to have a determination from evidence as to his (her) own acts and statements and conduct, and any other evidence which may be applicable to him (her).

During the trial you were excused from time to time or the trial delayed, while questions of law and matters solely for me to consider where discussed with the lawyers. This, as I have told you, is a usual and regular procedure. No prejudice of unfavorable inference should be held by you against any lawyer or party because of this. Do not discuss or consider what you think transpired in the courtroom in your absence.

From time to time, you have heard objections from one of the lawyers. It is not only the right, but the duty of a lawyer during a trial to make objections and a lawyer would be derelict in his (or her) duty if he (or she) did not raise objections whenever, in the lawyer's judgment, the evidence offered was contrary to law, rules, or procedures as he (or she) in his (or her) best judgment interprets them. You are not to allow yourselves to be swayed in your honest judgment because of any objection of a lawyer for any party at any time during the trial.

It has been my duty on occasion to admonish a lawyer who, out of zeal for his (or her) cause, may have said something which may not have been in keeping with the rules of evidence or procedure. You should not draw any inference because I may have

admonished a lawyer.

At the beginning of the trial, I read the Indictment to you. I'm going to read it to you again at this point. I want to caution you again that the Indictment is not evidence

As I read it to you, there are several things to bear in mind:

First, you will note that the Indictment names as defendants two persons who are not on trial here. You have heard testimony as to why they are not on trial.

Second, an Indictment is but a formal method of charging a person with a crime. It is not evidence of any kind.

Third, each of the defendants has each pleaded "not guilty" to the charges contained in the Indictment against him (her). This means each of the essential elements of the crimes charged as I will describe them to you is in issue and imposes on the government the burden of establishing these elements by proof beyond a reasonable doubt.

Fourth, unless the government proves beyond a reasonable doubt that a defendant has committed each element, you must find that defendant not guilty.

Before I read the Indictment to you, however, I will describe to you what is meant by burden of proof and reasonable doubt.

The law presumes each defendant to be innocent of any crime. Thus, each defendant, although charged, begins the trial with a "clean slate"-- with no evidence against him (her). And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant.

So the presumption of innocence alone is sufficient to acquit a defendant, unless and until you, as jurors, are satisfied beyond a reasonable doubt of a defendant's guilt and then only after careful and impartial consideration of all the evidence in the case.

The law does not require that the government prove a defendant guilty beyond all possible doubt; the test the law applies is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

You must remember that a defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the government to prove a defendant's guilt beyond a reasonable doubt. This burden never shifts to a defendant; the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

So if you, after careful and impartial consideration of all the evidence in the case, have a reasonable doubt that a defendant is guilty of a charge, you must acquit that defendant on that charge. If you view the evidence in the case as reasonably permitting either of two conclusions -one of innocence, the other of guilt - you must return a verdict of not guilty.

In these instructions, I may use the phrase "if you find" from time to time. When I use the phrase, I will not always say "if you find beyond a reasonable doubt." However, you should bear in mind that when I use the phrase "if you find" relating to a particular fact or circumstance, I mean you have found that fact or circumstance beyond a reasonable doubt after due consideration of all of the evidence.

I will now read the indictment to you:

[READ INDICTMENT]

Let me again remind you, as I told you a minute ago, an Indictment is but a formal method of charging a person with a crime and is not evidence of any kind.

You will note the Indictment charges that the offenses described were committed "on or about" certain dates. The proof need not establish the exact dates of the alleged offenses. It is sufficient if the evidence establishes beyond a reasonable doubt that an offense was committed on dates reasonably near the dates set forth in the Indictment.

In the Indictment and in these instructions, there are several terms used which I will now explain to you. These terms are "knowingly," "willfully," and "unlawfully." I may be using them more than once. I will not repeat these definitions; each time I use one of these words, the definitions I now give you will apply.

Likewise, I will read to you the laws involved and the definitions of some of the terms used in those laws.

An act is done "knowingly" if it is done voluntarily and intentionally, and not because of mistake

or accident or other innocent reason.

An omission or a failure to act is "knowingly" done, if it is done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" is to insure that no one will be convicted for an act done or a failure to act because of a mistake, or an accident, or other innocent reason.

As I will tell you, with respect to the offense(s) charged in this case, a specific intent must be proved beyond a reasonable doubt before there can be a conviction.

An act is done "willfully" if it is done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with a bad purpose either to disobey or to disregard the law.

An omission or failure to act is "willfully" done, if it is done voluntarily and intentionally, and with the specific intent to fail to do something the law requires to be done; again, that is to say, with a bad purpose either to disobey or to disregard the law.

"Unlawfully" means contrary to law. So, to do an act "unlawfully" means to do willfully something which is contrary to law. Likewise, "unlawfully" to fail to act means willfully to fail to do something the law requires to be done.

I am now going to instruct you on the law applicable to the particular counts. I will do so by dividing this portion of the instructions into four parts. I will first instruct you on the law applicable to Count __, then the law applicable to Counts__.

As part of the instructions I am about to give you, I will read to you additional laws.

When you consider the laws involved and apply them to the facts of this case as you find them, words of common or ordinary usage are to be given their common or ordinary meaning and interpreted in a common sense fashion.

[READ INSTRUCTIONS OF THE LAW OF THIS CASE]

I have just explained to you the law applicable to this case. Now, I will give you instructions about the evidence and the manner of weighing the evidence.

There is nothing peculiarly different in the way you should consider the evidence in a criminal

case from that in which all reasonable persons treat any question depending upon evidence presented to him or her. You are expected to use your good sense, consider the evidence for only those purposes for which it has been admitted, and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If a defendant is not proved guilty beyond a reasonable doubt, say so. If a defendant is proved guilty beyond a reasonable doubt, say so.

Keep in mind that it would be a violation of your duty to base a verdict of guilty upon anything other than the evidence that has been presented to you; and remember as well, as I have told you, that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Remember also that the question before you can never be: will the government win or lose the case? The government always wins when justice is done, regardless of whether the verdict is not guilty or guilty.

If any reference by me or any of the lawyers to matters of evidence does not coincide with your own recollection, it is your recollection of the evidence which should control during your deliberations.

The evidence in the case consists of the sworn testimony of the witnesses, regardless of who may have called them; and all of the exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated.

Statements and argument of the lawyers are not evidence unless made as an admission or stipulation of fact. When the lawyers on both sides stipulate or agree as to the existence of a fact, however, you must, unless otherwise instructed by me, accept the stipulation as evidence, and regard that fact as proved.

Any evidence as to which an objection was sustained by me, and any evidence ordered stricken by me, must be entirely disregarded. As to an objection which I sustained, disregard the question entirely; do not draw any inference from the question; do not speculate as to what the answer might have been.

At certain times during the trial, evidence was admitted for a limited purpose, and not generally. You are to consider such evidence only for that limited purpose for which it was admitted.

When I allowed testimony or other evidence over an objection, I, of course, did not intend to indicate that I had any opinion as to the weight or effect of such evidence. As I have said, you are the sole judges of the credibility of the witness and the weight and effect of the evidence.

Anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you saw and heard as the witnesses testified. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reasons and common sense lead a jury to draw from facts which have been established by the evidence in the case.

There are two types of evidence from which you may find the truth as to the facts of the case-direct and circumstantial evidence. Direct evidence is the testimony of a person who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the innocence or guilt of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. Where the nature of the government's proofs as to any point are circumstantial in nature, you should take care that each fact which is necessary to complete the required chain of circumstances is proved beyond a reasonable doubt. Circumstances are never presumed. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of a defendant beyond a reasonable doubt, you must find that defendant not guilty.

You, as jurors, are the sole judges of the credibility of the witnesses and the wight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive, and state of mind, and demeanor and manner while on the witness stand. Consider the witness' ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side; the manner in which each witness might be affected by

the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness may or may not cause a jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent mis-recollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer a defendant's intent from the surrounding circumstances. You may consider any statement made by a defendant, and all the other facts and circumstances in evidence which indicate his state of mind.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. As I have said, it is entirely up to you what facts to find from the evidence.

You have heard testimony which, if believed, would suggest one or more of the defendants may have been involved in the commission of crimes, wrongs, or acts not charged in the Indictment.

The defendant(s) is/are not on trial for any charges other than those set forth in the Indictment.

However, the law permits evidence of other crimes, wrongs, or acts to be considered by a jury for certain limited purposes. This evidence has been admitted in this case for such limited purposes relating to the charges contained in Count __ of the Indictment.

Testimony relating to such other crimes, wrongs, or acts may only be considered by you in connection with the question of a defendant's relationships, knowledge or intent regarding the charges contained in Count __ of the Indictment. If you do so find, you may then, and only then, consider testimony regarding acts not charged in Count __ of the Indictment in determining whether in doing the act charged in Count __ of the Indictment
a defendant had the relationship or acted with the intent or knowledge charged in Count __ of the Indictment, and not because of mistake or accident, or other innocent reason.

The reason why the law treats such "other acts" evidence, as it is called, in the way I have described is because the law recognizes that it would not be fair to put a defendant on trial for charges not contained in the Indictment or call on a jury to speculate on a defendant's innocence or guilt of the charges in an Indictment on the basis that the defendant may have been guilty of other acts.

To constitute any of the crimes charged in the Indictment there must be the joint operation of two essential elements: an act forbidden by law and an intent to do the act.

Before a defendant may be found guilty of a crime, the government must establish beyond a reasonable doubt that under the law described in these instructions the defendant was forbidden to do the act charged the Indictment, and that he (she) intentionally committed the act.

There has been testimony from witnesses whom you may find to have been accomplices. An accomplice is one who unites with another in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the criminal act charged. However, you should keep in mind that such testimony is to be received with caution and weighed with great care.

The testimony of an accomplice, alone, if believed by you, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. You should not convict a defendant upon the unsupported testimony of an accomplice, however, unless you believe that unsupported testimony beyond a reasonable doubt.

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. A prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is your province to determine the weight to be given to any prior conviction as impeachment.

A person who testifies as part of an agreement made with the government to reduce or dismiss certain charges against him (or her) is a competent witness. His (or her) testimony may be received in evidence and considered by you even though not corroborated or supported by other evidence.

Such testimony, however, should be examined by you with greater care than the testimony of an ordinary witness. You should consider whether the testimony may be colored in such a way as to further the witness' own interest, since a witness who realizes that he may procure his own freedom by incriminating another has a motive to falsify. After such

consideration, you may give the testimony of such a witness such weight as you feel it deserves.

The testimony of a witness may be discredited or impeached by showing that the witness previously made statements which are inconsistent with the witness' present testimony. Any earlier contradictory statement is admissible only to impeach the credibility of the witness, and not to establish the truth of the statements. A witness may also be discredited or impeached by contradictory evidence. It is your province to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witnesses' testimony in other particulars. You may reject all the testimony of that witness or give it such credibility as you may think it deserves.

You may also consider any demonstrated bias, prejudice, or hostility of a witness toward a defendant in determining the weight to be accorded to the testimony of a witness.

Some of the defendants have chosen not to testify. As I have told you, the law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn from the fact that a defendant has not testified.

And, as stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

However, a defendant who chooses to testify is a competent witness. His (or her) testimony is to be treated by you in the same manner as the testimony of any other witness.

You are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness' bearing and demeanor, or because of the inherent improbability of the testimony, or for any other reasons sufficient to you, that such testimony is not worthy of belief.

On the other hand, the government is not required to prove the essential elements of the offenses charged by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of an offense charged if you believe that the witness has truthfully and accurately related what in fact occurred.

The law does not require the government to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require the government to produce as exhibits all the papers and things mentioned in the evidence.

However, in judging the credibility of the witnesses who have testified, and in considering the weight and effect of all evidence that has been produced, the jury may consider the government's failure to call other witnesses or to produce other evidence in the case to be in existence and available.

You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, and no adverse inferences may be drawn from a defendant's failure to do so.

Likewise, the weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

The rules of evidence permit a witness, upon occasion and under certain circumstances, to express an opinion as to relevant and material matters, and also allow a witness, when stating an opinion, to state the reasons for the opinion.

You should give such opinion testimony such weight as you may think it deserves. You must weigh and consider testimony regarding an opinion in the light of reason and common sense, giving due consideration to the witness' qualifications to express the opinion.

As I have told you, you are to consider each count of the Indictment separately as to each defendant. If you find that the government has established the elements of the crime charged in a particular count as to a defendant beyond a reasonable doubt, you will find that defendant guilty of the crime charged in that count. On the other hand, if the government failed to establish any one of the elements of the crime charged in a particular

count as to a defendant beyond a reasonable doubt, you will find that defendant not guilty of the crime charged in that count.

The punishment provided by law for the offenses charged in the Indictment is a matter exclusively within my province, and should not be considered by you in any way in arriving at your verdict as to the innocence or guilt of a defendant.

The verdict must represent the considered judgment of each of you. In order to return a verdict as to a defendant it is necessary that each of you agree. Your verdict must be unanimous.

It is your duty to consult with one another and too deliberate with a view in reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of deliberations, do no hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender a hone's conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges- judges of the facts. Your sole interest is to seek the truth from the evidence of the case.

Nothing said in these instructions-nothing in any form of verdict prepared for your convenience-is to suggest or convey in any way or manner any intimation as to what verdict I think you should find. The verdict in this case is the sole and exclusive duty and responsibility of you, the jury.

When you go to the jury room, you should select one of you to act as your foreperson. The foreperson will then preside over your deliberations and will be your spokesperson here in court.

If it becomes necessary during your deliberations to talk with me, you may send a note by the bailiff, signed by your foreperson, or by one or more members of the jury. You should not attempt to talk with me by any means other than a signed writing. I will not talk with any of you on any subject touching upon the case, otherwise than in writing, or orally here in open court.

I am not sending the exhibits with you as you retire for your deliberations. You are entitled, however, to see any or all of the exhibits. I suggest that you begin deliberations and then, if it would be helpful to you, you may ask for any or all of the exhibits simply by sending a note from your foreperson to me through the bailiff.

I will give you a cassette recording of these instructions for your use while deliberating. It is available to each of you. If you have questions about the law or your duties as jurors, you should consult the recording of the instructions.

The form of verdict will be furnished you. You will take this form to the jury room and when you have reached agreement as to your verdict, in accordance with these instructions, you will have your foreperson fill in the date and sign the form and state the verdict upon which you have agreed and then return with the verdict to the courtroom. You will note from the form that

you are to return a separate verdict as to each defendant for each count in which he (she) is named.

I will now read the verdict form to you.